

REMARKS/ARGUMENTS

This Supplemental Amendment After Final is filed in response to the Notice of Non-Compliant Amendment dated January 27, 2005. A complete listing of all the claims is now present.

The drawings were approved by the Examiner in view of Applicant's remarks filed on March 29, 2004. Enclosed herewith is a replacement sheet to reflect the approved changes to Figures 2A and 2B. Also enclosed herewith are the other sheets of the drawings, thereby constituting a complete set of the drawings.

Claim 16 was rejected under 35 U.S.C. § 112 as being indefinite. Amended Claim 16 now refers to a resiliently compressible material such as an elastomer. Thus, it is clear that the elastomer is one example of a particular compressible material.

Claims 14-19 were rejected under Section 102 as being unpatentable over Coy in view of Boese. Amended Claim 1 now defines that the volume of the passage is also large enough to additionally absorb the effect of downward shaking of the cup. Boese specifically teaches away from any type of passage that prevents dispensing of a liquid by a downward shaking of the cup. Rather, Boese teaches a passage that easily allows liquid to be dispensed from the container by shaking. Column 2, lines 3-5 state that "the contents may be easily ejected from the container through the plug by simply shaking the container". Column 4, lines 15-18 further state that "when it is desired to dispense the contents of the container 10, it is only necessary to shake the container up and down to force the liquid through the sinuous passageway".

In contrast, the present invention is directed towards a cup wherein the cup may be subjected to shaking in addition to inversion, yet, the cup resists leakage unless the user is actually drinking from the cup. Therefore, shaking of the cup in a downward direction should not cause liquid to be expelled. As mentioned above, this is clearly contrary to the teachings of Boese which provide a container especially designed so that controlled dispensation is provided by a shaking action. Thus, the combination of Coy and Boese do not disclose the subject matter of amended Claim 1.

The Examiner also noted that for Claim 19, it would have been an obvious matter of design choice to make the passage of approximately 3 mm. Claim 19 is directed to the desirable result of preventing entry of air through the liquid in the passage. If air is allowed to pass through the passage, this bubbling effect of air will negate the reduced pressure formed within the cup portion that acts to retain the liquid in the spout during both inversion and downward shaking. Thus, the selection of the 3 mm diameter is not simply from a consideration of the desired flow of liquid, but to substantially prevent flow of liquid due to the introduction of air into the passage. At best, the references are silent as to any type of design choices regarding sizes of passageways to prevent the undesirable bubbling effect of air into the passageways.

Applicant also contends that the combination of the Coy and Boese references is improper. Coy is directed to a device wherein a removable valve is opened by application of force laterally to the edge of the valve. The application of force to open the valve requires that both the valve and the spout be deformed by the mouth of the user. Thus, Coy is clearly not directed to an invention wherein dispensing of liquid is achieved by a helical passageway formed

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in the spout. There is simply no motivation to combine the references as the Examiner has done to modify the primary reference Coy with the detachable plug of Boese. Thus, the combination of the detachable plug of Boese with Coy essentially destroys Coy as a primary reference because the structure and function is completely changed by substituting the detachable plug of Boese. Furthermore, it is noted that the detachable plug in Boese is not disclosed as having any type of compressible characteristic and rather, appears to have a stiff construction which allows dispensing of liquid by shaking, thus inherently teaching away from a compressible plug which would not operate consistently if the plug deformed during shaking.

New Claims 20-24 are provided which are also believed to clearly distinguish over the prior art of record. In particular, independent Claim 20 requires a maintaining step wherein both the spout and detachable member are not deformed during dispensing of liquid. This maintaining step clearly distinguishes over any combination of the structure or methods shown in Coy and Boese.

Coy requires deformation of both the spout and valve in order to dispense liquid. This feature of Coy specifically teaches away from the claimed method.

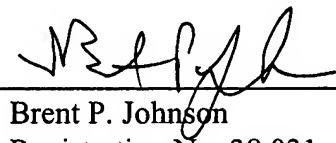
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Applicant has made a sincere effort to place the application in a condition for allowance; therefore, such favorable action is earnestly solicited. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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